

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

LIBERTAS CLASSICAL ASSOCIATION,
Plaintiff,

Case No. 1:20-cv-997

v.

Hon. Paul L. Maloney

GRETCHEN WHITMER, et al.
Defendants.

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| Ian A. Northon (P65082) RHOADES MCKEE PC Attorneys for Plaintiff/Counter-Defendant Libertas Classical Association 55 Campau Ave, NW, Ste. 300 Grand Rapids, MI 49503 (616) 235-3500 ian@rhoadesmckee.com rtakens@rhoadesmckee.com | Douglas W. VanEssen (P33169) Elliot J. Gruszka (P77117) SILVER & VAN ESSEN, PC Attorney for Defendant/Counter-Plaintiff Marcia Mansaray 300 Ottawa Ave, NW, Suite 620 Grand Rapids, MI 49503 (616) 988-5600 dwv@silvervanessen.com egruszka@silvervanessen.com |
| Ann M. Sherman (P67762) Deputy Solicitor General Rebecca A. Berels (P81977) Assistant Attorney General Attorneys for Defendant Dana Nessel P.O. Box 30212 Lansing, MI 48909 (517) 335-7628 ShermanA@michigan.gov BerelsR1@michigan.gov | Daniel J. Ping (P81482) John G. Fedynsky (P65232) Assistant Attorneys General Attorneys for Defendants Gretchen Whitmer and Robert Gordon P.O. Box 30736 Lansing, MI 48909 (517) 335-7632 PingD@michigan.gov FedynskyJ@michigan.gov |

PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff submits this Notice of Supplemental Authority to inform the Court of a recent decision from the U.S. Court of Appeals for the Ninth Circuit, *Brach v. Newsom*, No. 20-56291, __F.4th __, 2021 WL 3124310 (CA 9, July 23, 2021) supporting Plaintiff's opposition to Defendant Mansaray's Motion for Judgment on the Pleadings or Summary Judgment. (ECF No. 56). A copy of the Opinion is attached hereto as **Exhibit 1**.

The majority included the Honorable Eugene E. Siler, Jr., United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation. The Ninth Circuit held in relevant part as applied to private schools¹ that: the State's rescission of per se school closure order did not render moot due process and equal protection challenges to COVID restriction against in-school learning; the claims came within exception to mootness doctrine for acts that were capable of repetition yet evading review; and COVID-19 restrictions violated substantive due process as applied to parents who sent their children to private school.

Accordingly, Plaintiff respectfully requests that this Court take notice of the decision when analyzing the pending motion. (ECF Nos. 53-54).

Dated: August 6, 2021

RHOADES McKEE PC
Attorneys for Plaintiff

By: /s/Ian A. Norton
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¹ The *Brach* decision involved private and public school plaintiffs; only the former are relevant to the instant case.

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2021, I electronically filed the foregoing document(s) with the Clerk of the Court using the ECF System, which will provide electronic notice and copies of such filing to counsel of record.

/s/Ian A. Northon
Ian A. Northon (P65082)

A courtesy copy of this the aforementioned Opinion was placed in the mail directed to:
Hon. Paul L. Maloney, 137 Federal Bldg., 410 W. Michigan Avenue, Kalamazoo, MI 49007.